

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

DEFENDERS OF WILDLIFE; ET AL.,)	
)	
Plaintiffs,)	Civil No. 03-1348-JO
)	
v.)	<u>ORDER</u>
)	
SECRETARY, UNITED STATES DEPARTMENT)		
OF THE INTERIOR; ET AL.,)	
)	
Defendants.)	

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JONES, Judge:

Federal Defendants move under Fed. R. Civ. Pro. 59(e) to alter or amend the judgment on two issues. First, Federal Defendants ask the Court to lift the injunction barring the application of regulations issued under Section 4(d) of the Endangered Species Act (the "4(d) Rules"), which implemented rules for "taking" the gray wolf as a threatened species. Federal Defendants argue that when the Court vacated the Final Rule that downlisted the endangered gray wolf to a "threatened" status, the 4(d) Rules became nugatory. Thus, Federal Defendants assert that the Court erred in issuing the injunction and seek to rescind the January 31, 2005 Order ("Order"). Alternatively, Federal Defendants argue that the Court must alter its Order to balance harms to each party in deciding whether to issue the 4(d) Rules injunction.

Second, Federal Defendants ask the Court to clarify whether the Order invalidates that part of the Final Rule that delisted the gray wolf in 14 southeastern states due to listing error.

While a party may move to "alter or amend" a judgment under Fed. R. Civ. Pro. 59(e), the court is not bound by the movant's nomenclature and should address the motion according to the nature of relief requested. Miller v. Transamerican Press, Inc., 709 F.2d 524, 527 (9th Cir. 1983). As the Federal Defendants seek clarification of the Order and not a substantive change in the judgment, I will address their motion as a Rule 60(a) motion for relief for clarification. See Jones & Guerrero Co. v. Sealift Pacific, 650 F.2d 1072, 1074 (9th Cir. 1981) ("The rule may be used to make an order reflect the actual intentions of the court, plus necessary implications."); see also Blanton v. Anzalone, 813 F.2d 1574, 1577 fn. 2 (9th Cir. 1987) (Rule 60(a) corrections are not substantive changes in the judgment).

My Order vacated the policy decision of the Final Rule and enjoined the implementation of the 4(d) Rules. One addresses an invalid decision, the latter addresses an inappropriate procedure given an invalid decision. I need not balance harms to each party in granting the injunction because "[c]ongress has spoken in the plainest of words, making it abundantly clear that the balance [of equities] has been struck in favor of affording endangered species the highest of priorities." Biodiversity Legal Found. v. Badgley, 309 F.3d 1166, 1177 (9th Cir. 2002) (quoting TVA v. Hill, 437 U.S. 153, 194 (1978)) (internal quotation omitted).

Further, the Order vacated the Final Rule which includes the de-listing of the gray wolf in 14 southeastern States as listing error. Of course, the de-listing of the gray wolf in the southeastern United States can be addressed in any subsequent Final Rule on the status of the gray wolf. Therefore, I DENY the Government's Motion to Alter or Amend The Judgment (# 183).

Further, I GRANT IN PART Federal Defendants' Motion to Stay Plaintiffs' Petition (# 185) for Costs Including Attorneys' Fees (# 188) pending Federal Defendants' decision whether to appeal, but DENY IN PART Federal Defendants' request to defer awarding attorneys' fees in the event of an appeal.

DATED this 6th day of May, 2005.

ROBERT E. JONES
U.S. District Judge